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Held at the Palais des Nations, Geneva,
on Thursday, 11 November 1993, at 10 a.m.

Chairman: Mr. VOYAME

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* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.160/Add.1.

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The meeting was called to order at 10.15 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 4) (continued)

Initial report of Poland (CAT/C/9/Add.13)

1. At the invitation of the Chairman, Mrs. Skórzewska-Łosiak, Mr. Zdzislaw Kędzia and Mrs. Grazyna Górecka (Poland) took seats at the Committee table.

2. Mr. KĘDZIA (Poland), introducing his country's report (CAT/C/9/Add.13), said his Government's view was that the examination of Poland's initial report by the Committee would create a better understanding of the process of implementing the provisions of the Convention and assist in the formulation of measures, both legislative and administrative, which were still required for the Convention to be implemented.

3. The history of Poland during the twentieth century had been complex and troubled. The long period of communist rule after 1945 had drawn to a close when, in 1989 and in response to growing public pressure, round table talks had been held by the Government and the opposition centred around the "Solidarity" trade union. Those talks had laid the foundations for the peaceful political and economic transformation of the country. The report covered the period of democratic change which had followed the entry into force of the Convention on 25 August 1989.

4. Fundamental constitutional changes and a number of new constitutional safeguards had been introduced in 1989, which had also been the year of the first parliamentary elections since 1947 in which a lawful and organized opposition had been able to participate. From that time onwards, political, economic and social reforms had gathered momentum and, through the constitutional amendment of 29 December 1989, Poland had been proclaimed a democratic, parliamentary republic based on the rule of law. On 17 October 1992, Parliament had adopted the Constitutional Act on relations between the legislative and executive branches of government and on local self-government, which had superseded the 1952 Constitution, except for those chapters, amended in 1989, dealing with human rights and the administration of justice. Although those chapters remained in force, there was now a clear wish on the part of the political establishment to adopt a new constitution covering all constitutional matters. It was expected that the new Constitution would, unlike the existing one, expressly prohibit torture and other cruel, inhuman and degrading treatment or punishment, provide for a constitutional complaints procedure and possibly also abolish the death penalty. On the other hand, the absence of provisions expressly prohibiting torture did not mean that it was tolerated and it was in fact already punishable under criminal law.

5. Agreements concluded during round table talks had covered most aspects of the protection of human rights, the administration of justice and criminal law. New institutions had been created and existing ones strengthened as part of the overall process of establishing a State based on the rule of law and Poland now had a comprehensive system of institutions safeguarding human

rights. The administration of justice was left to an independent judicial system which included the Supreme Court, the Constitutional Court, the Higher Administrative Court, which ruled on administrative acts claimed to be unlawful, and the Commissioner for Human Rights, who was empowered to investigate breaches of law, as well as violations of accepted principles of community life.

6. A number of amendments had been made to criminal law. Certain acts had been decriminalized and measures introduced to improve protection for persons accused, detained or imprisoned and to protect citizens from arbitrary and unlawful detention by enhancing judicial oversight and making the State liable for damages in any case of unlawful detention. The reforms also strengthened Poland's determination to continue the moratorium on capital punishment which had been in effect since 1988.

7. A radically different attitude now prevailed in Poland regarding the international protection of human rights. It was now accepted that respect for fundamental human rights and freedoms was the legitimate concern of the international community and Poland had welcomed the Vienna Declaration, which had proclaimed that principle through consensus. The Government of Poland endorsed the idea that the prevention of human rights violations was crucial to ensuring observance of human rights and it was actively involved in the work of the Working Group on the draft optional protocol to the Convention, an instrument which was on its way to becoming the first international legal instrument of a purely preventive character.

8. Poland had ratified 19 of the 25 universal treaties governing human rights, including both International Covenants and the United Nations Convention relating to the Status of Refugees. It had fundamentally revised its previous position on the system of international monitoring of compliance with international human rights treaties by, for example, formally recognizing the competence of the Human Rights Committee to consider notifications of non-compliance with the International Covenant on Civil and Political Rights, by acceding to the Optional Protocol to the International Covenant on Civil and Political Rights, by accepting the competence of the Committee against Torture under articles 21 and 22 of the Convention and by ratifying the European Convention on the Protection of Human Rights and Fundamental Freedoms.

9. Under the Constitution of 1952, international treaties had not been considered by Polish courts to be directly applicable in the domestic legal system and, in 1987, for example, the Supreme Court had ruled that ILO Convention No. 87 was not applicable in the case of the registration of the then banned "Solidarity" trade union, on the grounds that international treaties were binding internally only when they had been formally incorporated into domestic law, for which no provision had existed. In 1992, however, the Supreme Court had ruled that international instruments which had been ratified with the consent of Parliament and published in the Journal of Laws were automatically incorporated into domestic law.

10. Conventions ratified in that way included the Convention on the Rights of the Child and the European Convention on the Protection of Human Rights and Fundamental Freedoms. Regrettably, however, the Convention against Torture

and other Cruel, Inhuman or Degrading Treatment or Punishment had been ratified under the old rules and could therefore not be considered to have been incorporated into Polish law. That situation was expected to change with the adoption of the new Constitution, which would in all probability place all the human rights treaties ratified by Poland on an equal footing and incorporate them into domestic law. Whether or not they had been formally incorporated into domestic law, however, international human rights instruments were having an ever increasing influence on rulings handed down by the Polish judiciary.

11. In addition to the important legal reforms safeguarding civil rights which were described in the report, the police force had undergone administrative and operational reforms to promote respect for the principles of the Convention. There had been considerable difficulty in obtaining information on serious human rights abuses perpetrated by the security forces. A Special Commission had presented a full report to Parliament in 1991 on the outcome of its inquiries into the deaths of 120 persons allegedly caused by the security forces. It had recommended criminal proceedings in 91 cases.

12. The judiciary remained the key element in the system for ensuring compliance with the principles of the Convention. Members of the judiciary were independent and could not be dismissed and rulings on important matters relating to the functioning of the courts were left to the judiciary's own professional organs of self-government. Candidatures for judicial appointment were submitted to the President of the Republic by the National Council of the Judiciary, a body composed mostly of judges.

13. The Human Rights Commissioner also played a very important role in implementing the provisions of the Convention and had, through a comprehensive report based on his first series of visits to prisons two years previously, considerably influenced the reform of the present system. The work of non-governmental organizations such as the Helsinki Committee in Poland, which enjoyed unrestricted freedom to visit prisoners, also made a major contribution which was valued by the Government.

14. The report covered a wide range of problems, but could not be totally comprehensive. The Polish delegation would be pleased, if the Committee so wished, to go into greater detail on the projects under discussion or already under way and those likely to get under way in the near future, especially with regard to the reform of criminal law, much of which would relate to rules reflecting the provisions of the Convention.

15. Mr. MIKHAILOV (Country Rapporteur) noted with satisfaction that the report submitted by the Polish delegation dealt with all the questions raised by the Convention and had been drafted in accordance with the Committee's guidelines. He also welcomed the obvious progress made by Poland in its efforts to combat torture through legislative reform and practical measures, especially in prisons. Torture was no longer commonplace and indeed the statutory obligations of such bodies as the police were no longer interpreted in such a way that the representatives of those bodies could not be charged with acts of torture.

16. However, while the report appeared to reflect accurately the legislative situation, certain questions remained. Referring to the fourth paragraph of the introduction, he asked for clarification on contacts with non-governmental organizations and, in particular, on the legal framework within which such contacts were established.

17. With regard to the abolition of the death penalty provided for by the draft Penal Code (para. 6), he asked whether Poland had ratified the Optional Protocol on the death penalty to the European Convention on Human Rights and what public opinion was regarding the death penalty.

18. In connection with paragraph 15, he asked which international agreements were being referred to.

19. Paragraph 20 stated that an extension of the pre-trial detention ordered by the Public Prosecutor for a period not exceeding three months might be ordered only by the Supreme Court. However, in the last sentence of the paragraph, it was stated that a complaint might be lodged against the court's decision to extend the pre-trial extension with the court of second instance. If the decision rested with the Supreme Court, what was the court of second instance referred to? Did such a court exist within the Supreme Court itself?

20. In the current Polish Penal Code, there were offences that could be described as torture for which the law did not provide severe penalties. However, paragraph 24 of the report stated that: "The rules relating to judgements concerning offences covered by the Convention are the same as in the case of a serious common law offence". He asked whether the concept of a "serious offence" was provided for in the current Penal Code.

21. With regard to paragraph 28, he asked where the provision concerning foreign witnesses who appeared voluntarily before a court was to be found in Polish legislation.

22. In connection with paragraph 29, he asked what forms of documentation and information on the prohibition of torture were included in the training programmes for civilian or military personnel and others. Was special training given in the faculties of law and medicine and was there a programme for prison officers and doctors?

23. With respect to paragraph 30, he requested information on the minimum sentence and the regime for minors and women, on how decisions were taken and on what the relevant practice was.

24. Concerning paragraph 37, he asked what the difference was between places of detention for prisoners awaiting trial under the jurisdiction of the Ministry of Justice and places of detention in militia premises. What was the difference between the regimes, how were decisions taken and were any changes proposed?

25. Referring to paragraph 45, he asked what legislation and practice governed the right to complain of torture to the competent authorities, how decisions were taken, whether there was any judicial control and what time-limits were involved.

26. With regard to paragraphs 47 to 50, he asked whether there was a difference between "redress" and "compensation" and whether there were specific rules governing compensation for torture. Paragraph 50 stated that "the injured party may call for redress under the general rules", but article 14 of the Convention provided for more specific treatment. Did Poland intend to formulate any specific provisions in that regard?

27. Mr. KHITRIN (Alternate Country Rapporteur) thanked the Polish delegation for its written report and excellent oral introduction. In some ways, however, the report did not conform with the Committee's guidelines. The relevant legislation should have been annexed to the report, which also did not quote the actual legal provisions relating to the implementation of the provisions of the Convention. The Police Act and the law on national security agencies should have been annexed to the report so that their effectiveness could be assessed.

28. He noted with satisfaction that Poland had ratified the Convention without any reservations.

29. He wished to know when the office of Ombudsman had been established, to which jurisdiction the administrative correctional courts referred to in the introduction were subject and whether they were independent.

30. In the introduction, it was stated that, before the Convention had been ratified, there had been torture in Poland. He wished to know how many officials had been prosecuted for acts of torture. What measures had been taken against the 82 prison service officials mentioned in the last paragraph of the introduction and against the officials of the National Security Service whose actions were alleged to have resulted in the death of 120 persons?

31. Turning to article 2 of the Convention, he said that he was concerned about the statement in paragraph 5 of the report that the Police Act recognized that a policeman who committed a forbidden act in the execution of an order or instruction did not commit an offence unless he was aware that by agreeing to execute the order he was committing an offence. Such a provision allowed officers to evade their responsibility, but perhaps the text was incorrect.

32. He was happy to see that the abolition of the death penalty was provided for in the draft Penal Code and asked how many persons sentenced to death had actually been executed in the past five years.

33. With respect to article 3, he wished to know how many persons had been turned over to foreign States and in which cases extradition had been refused during the past five years.

34. In connection with article 4 of the Convention, he asked whether the translation of paragraph 10 of the report was correct, since it seemed to indicate that physical and mental maltreatment was allowed under article 248 of the draft Penal Code.

35. Turning to article 6 and paragraphs 17 and 18 of the report, he asked how long persons could be detained before being allowed to see their lawyers and whether detained persons could have correspondence and visits. After what period did they have to be charged?

36. With regard to paragraph 20, he asked how pre-trial detention operated and in how many cases had such detention been extended for a period of one year.

37. With respect to article 11, he asked how many persons were serving prison sentences, what types of corrective labour institutions existed and what regime of detention they had. What measures had been taken as a result of the inspections carried out by judges in prisons?

38. Referring to paragraph 36, he asked whether there were military prisons in Poland, what their legal status was and whether any serious violations of the law against torture took place in them.

39. Mr. SORENSEN thanked the Polish delegation for its oral introduction, which had shed light on the written report.

40. In connection with paragraph 4 of the report, which stated that the Police Act of 1990 provided for "a penalty of from one to five years' imprisonment for a policeman who uses force or unlawful threats or moral maltreatment for the purpose of obtaining explanations, depositions or statements", he suggested that the penalty should be imposed for any other reasons, in accordance with the intention of article 1 of the Convention.

41. As to paragraph 79 of the report and article 3 of the Convention, he asked how Poland ensured that refugees in danger of being tortured in their own country were not extradited.

42. Referring to paragraph 29 of the report and articles 10 and 14 of the Convention, he requested further information on the retraining of police and prison officers accustomed to the former regime and on training for medical doctors. Article 14 of the Convention provided that each State party should ensure rehabilitation for victims of torture, but victims found it difficult to come forward and it was therefore important for doctors and nurses to receive some training in identifying persons in need of rehabilitation. The Advisory Services, Technical Assistance and Information Branch of the Centre for Human Rights could be of assistance in that regard.

43. Turning to paragraph 45 of the report and article 13 of the Convention, he said he was pleased to see that a person who stated that he had been tortured in Polish territory had the right to complain to the competent authorities. However, he wished to know whether victims blindfolded during torture could lodge a complaint against the State, since it would not be possible for them to identify their torturers.

44. With respect to paragraphs 47 to 54 of the report and article 14 of the Convention, he noted that the Polish legal system provided for redress and compensation. He took it that Poland did not have the problem of impunity. He pointed out that persons who had been imprisoned, and their relatives,

often suffered long-term sequelae after ill-treatment and needed rehabilitation. Advice was available from the Advisory Services, Technical Assistance and Information Branch and from the Committee in that regard.

45. He suggested that, if Poland did not yet contribute to the United Nations Voluntary Fund for Victims of Torture, it might wish to do so.

46. Mr. LORENZO thanked the Polish delegation for the excellent report and oral introduction.

47. Referring to the last two sentences of the tenth paragraph of the introduction to the report, he asked for details on the competence of the administrative correctional courts. He did not understand why those courts were described as "correctional", since that term, at least in Spanish, applied to courts dealing with minor offences. Could the ill-treatment defined in the Convention come within the jurisdiction of such courts?

48. With regard to paragraphs 7 and 8 of the report and article 3 of the Convention, he wished to know whether it was the Procurator-General or the court that took the decision on extradition and what jurisdiction the Procurator-General now had, since Procurators-General had formerly had far-reaching powers in the countries of Eastern Europe.

49. Mr. BURNS said that he welcomed the appointment of an Ombudsman responsible for ensuring respect for the rights and freedoms of citizens, which included, above all, human rights. However, information should be provided on how the Ombudsman was appointed, for how long and on what grounds he could be dismissed and it should be made clear whether or not he could be subjected to any form of external pressure or influence.

50. Paragraph 57 of the core document on Poland (HRI/CORE/1/Add.25) said that the power to declare a state of emergency was vested in the President. In the event that he exercised that power, what would be the effect on the implementation of the provisions of the Convention? For example, would it be possible to hold prisoners incommunicado and, if so, for how long? The Committee would also appreciate clarifications on whether Poland maintained separate security and police forces and, if it did, on whether the security forces had extraordinary powers that the civil police did not have.

51. It was not clear from the introduction to the initial report to what extent torture, as defined in the Convention, was punishable under Poland's domestic law. It would be of interest to the Committee to know whether the Convention was fully incorporated into international legislation by virtue of its ratification by Poland. If that was the case, did that account for the absence of a reference to a definition of torture in Poland's domestic law?

52. Material made available by the Secretariat stated that Poland had entered reservations to article 20 of the Convention. The Committee would welcome information on whether the reservations were still in force, whether Poland had made a declaration under article 22 and whether Poland had withdrawn the reservation to article 30, paragraph 1, which the previous administration had formulated when Poland had acceded to the Convention.

53. The report mentioned the prosecution of a number of persons found guilty of abuses which had resulted in the death of the victim. It would also be of interest to know if there had been any prosecutions of persons found guilty of abuse, ill-treatment or torture which had not resulted in death.

54. The hierarchy referred to in paragraph 5 seemed to be contrary to article 2, paragraph 3, of the Convention, which stated that "An order from a superior officer or public authority may not be invoked as a justification of torture". The Government of Poland should inform the Committee of what it intended to do to remove that discrepancy between its legislation and the Convention.

55. In respect of paragraph 7, information should be provided on how Poland dealt with the question of expulsion and refoulement, as distinct from extradition.

56. He was somewhat surprised that pre-trial detention could last for up to one year to allow investigations to be carried out. It would be of great interest to the Committee to know why investigations took so long and to have statistical data on the number of persons held in pre-trial detention for long periods of time. Details were also needed on the stage at which a detainee was granted access to a legal representative and on whether there were any circumstances in which a detainee could be held incommunicado.

57. He was glad to see that, under the draft Code of Criminal Procedure, the imposition of pre-trial detention would apparently be the result of a judicial decision, not an administrative one as at present. However, it was not clear from paragraph 21 whether that provision was applicable only to non-Polish nationals. It was to be hoped that the provision was all-embracing, but further details and clarification would be appreciated.

58. With regard to article 9, it seemed that Poland gave judicial assistance only where reciprocal agreements existed. The Government's replies should confirm or refute the truth of that assumption. He pointed out that, under the Convention, States parties were obliged to provide reasonable assistance even in the absence of reciprocal agreements.

59. In respect of article 14, he said that, in many cases, the victims of torture were unable to identify the perpetrator of the offence. It was therefore impossible for a victim in that situation to institute criminal proceedings and he would therefore be unable to obtain compensation in criminal actions and could not bring a civil suit. It was not clear whether an action against the State could be brought independently on behalf of the victim.

60. Mr. BEN AMMAR, congratulating the people of Poland on its successful and peaceful transition to democracy and on its determination to improve guarantees and protection against torture and other cruel, inhuman or degrading treatment or punishment, said it was nevertheless regrettable that Poland's initial report did not explicitly mention the legislative and regulatory instruments which gave effect to the provisions of the Convention. Poland would undoubtedly be reviewing and revising at least part of its Constitution. At that time, it should pay particular attention to article 2

of the Convention in order to ensure the adoption of "effective legislative, administrative, judicial or other measures to prevent acts of torture". He asked how Poland carried out the systematic reviews referred to in article 11 of the Convention and which bodies were responsible for them. He would also like some information on what action the Ombudsman could take and on whether his reports were made public.

61. In the interests of establishing a real and irreversible human rights culture which could withstand any potential onslaught or opposition on the part of reactionary forces, optimum use had to be made of the education system, the media and the network of political, social and cultural organizations. The Committee would welcome any details on the steps Poland was taking for that purpose.

62. Mr. EL IBRASHI said that he welcomed the establishment of the office of an Ombudsman and asked whether there was any overlapping between his sphere of competence and that of the courts, the Public Prosecutor and the police force.

63. With regard to paragraphs 18 and 20 of the report, he requested clarification on whether there was any limitation on the period of detention or whether it was the responsibility of the Public Prosecutor to take a decision. Once a detainee had been notified in writing of the charge against him, was there any automatic review of the detention by any person or court if the detainee had not lodged an appeal?

64. Paragraph 26 of the core document (HRI/CORE/1/Add.25) stated that "Judges are appointed by the President on the nomination of the National Judicial Council". What was the role of the President and were appointments automatic once a proposal from the National Judicial Council had been received? In the oral introduction, it had been stated that the National Judicial Council was composed mostly of judges, implying that persons other than judges were also members. As its composition had a direct bearing on its degree of independence, an indication of its membership would be welcome.

65. Turning to article 14, he requested information on the responsibility of the State if a public official or agent of the State was found guilty of actions contrary to the provisions of the Convention.

66. With regard to paragraph 52, clarification would be appreciated on how compensation for unjust conviction, arrest or detention was granted. Such claims were in fact civil actions, but the provisions relating to them were contained in the Code of Criminal Procedure.

67. The CHAIRMAN, speaking as a member of the Committee, said that he had been informed by the Secretariat that the reservations Poland had formulated when it had acceded to the Convention had not been entered at the time of ratification. Furthermore, declarations had been made under articles 21 and 22.

68. Referring to the report, he requested information on whether the provisions of the Convention were fully included in the Penal Code, the Code of Criminal Procedure and other legislative instruments. It was to be hoped

that, if that was not the case, any future Constitution would ensure that the provisions formed an integral part of Polish legislation.

69. He would also welcome information on the prosecution of and judgements handed down against persons who had committed acts of torture before and after Poland had ratified the Convention.

70. In respect of paragraph 6, he would appreciate it if the Government could supply information on the crimes and corresponding penalties to be included in the draft Penal Code. The Convention gave a clear definition of the crimes that constituted torture. Countries, especially those whose constitutions did not provide a clear definition of torture, had to make sure that offences which could be classified as torture or abuse were spelt out in their Penal Code and that the corresponding penalties could be applied.

71. With regard to paragraph 9, further information was needed not only on extradition, but also on repatriation and refoulement, to determine whether Poland's legal instruments fully complied with the provisions of article 3 of the Convention.

72. As to the statement in paragraph 11 that "The provisions of article 249 protect a person lawfully deprived of his freedom against torture", he said he hoped that the same protection would be afforded to those unlawfully deprived of their freedom.

73. It would appear that paragraphs 15 and 16 did not cover article 5, paragraph 2, of the Convention. Likewise, it was not explained in paragraphs 17 to 21 how the provisions of article 6, paragraphs 1 and 4, were implemented.

74. Turning to article 25, he pointed out that, under article 8 of the Convention, extradition was not conditional on the existence of a treaty and requested the delegation of Poland to comment on that point.

75. Concerning paragraph 26, he requested further clarification on how article 9 of the Convention was being implemented.

76. In respect of article 14 of the Convention, he agreed with other members of the Committee that some sort of State responsibility was essential. If responsibility was restricted to that of the torturers, article 14 might well remain a dead letter because, often, such persons escaped unrecognized, the victims having been blindfolded, and even when the guilty parties were identified, they were not in a position to pay compensation.

The public meeting rose at 12.10 p.m.